

5 at 2:45.

6 (Recess.)

7 CHAIRMAN HOGEN: If you could please be  
8 seated, we'll proceed with our next panel. The  
9 schedule is moving along amazingly close to how  
10 it was designed and that's a credit to the good  
11 job that our presenters have done staying within  
12 the parameters that we established and we're  
13 appreciative of that.

14 All of this is extremely important. I  
15 know five minutes is not really enough to tell  
16 the whole story, but it'll hopefully point us in  
17 the right direction.

18 This panel, consisting of tribal  
19 leadership, will more specifically address  
20 Economic Impact, and we are pleased to have from  
21 the Poarch Band of Creek Indians Buford Rolin,  
22 the Chair from the Confederated Tribes of the



1 Colville Reservation Michael Marchand, and from  
2 the National Indian Gaming Association Ernie  
3 Stevens, Jr., the Chair. He's accompanied by  
4 Mark Van Norman, the Executive Director.

5 So, with that, Mr. Rolin, would you care  
6 to proceed?

7 MR. ROLIN: Okay. Thank you, sir. Good  
8 afternoon, Chairman Hogen and Commissioner  
9 Choney.

10 My name is Buford Rolin. I'm the  
11 Chairman of the Poarch Band of Creek Indians.

12 I appreciate the opportunity to be here  
13 today and to share with you the reasons why we  
14 object to the Commission's current activities as  
15 they relate to the classification of games under  
16 the Indian Gaming Regulatory Act.

17 Our primary objection to the rulemaking  
18 is that it adds new requirements that must be



19 satisfied for a game to remain Class II. Because  
20 the Commission has never before required Class II  
21 games to contain these features, they are not  
22 presently included on any existing game. As a

217

1 result, if these proposed rules are finalized,  
2 all existing Class II games will instantly become  
3 Class III and therefore require a tribal state  
4 compact for their continued operation.

5 As you well know, the Poarch Band of  
6 Creek Indians has conducted gaming in the state  
7 of Alabama for more than 20 years. For the past  
8 15 years, we've been attempting to negotiate a  
9 tribal state compact. Although the state permits  
10 a broad range of gaming that, if offered on



11 Indian lands, would fall within the category of  
12 Class III gaming. The state has consistently  
13 ignored our request to negotiate.

14 What's more is that during the very same  
15 time as the state was refusing to meet with the  
16 tribe, they have allowed Class III gaming to  
17 flourish in Alabama.

18 Within the last five years in  
19 particular, the scope of Class III gaming in  
20 Alabama has grown dramatically. In 2003, voters  
21 in two Alabama counties approved the operation of  
22 bingo games by certain non-profit organizations.

1 Macon County, which is a mere 30 miles from the  
2 tribe's Wetumca facility, is home to the Victory  
3 Land Racetrack. Interestingly, the racetrack is



4 the only qualifying non-profit organization

5 within that county.

6 Under this authorization, the racetrack

7 now operates more than 3,000 electronic bingo

8 machines, machines that the tribe is prohibited

9 from operating. While these games satisfy the

10 state definition of bingo, they contain features

11 that, in the eyes of the Commission, transforms

12 them into Class III games, the most obvious of

13 these features being auto-daub. Despite the fact

14 that these one-touch games are being played

15 legally within the state, they're off limits to

16 the tribe.

17 Late last year, the racetrack in

18 Birmingham began operating electronic sweepstakes

19 machines. While the state challenged the

20 operation of this game, the court found them to

21 fall within a loophole of Alabama law. These

22 games are now spreading throughout the state,



1 further impacting our ability to remain

2 competitive.

3 Again, the Commission has advised us  
4 that they would consider these games to be Class  
5 III if we attempted to operate them.

6 At the very same time, the same time  
7 that state voters were expanding the scope of  
8 gaming in Alabama, our tribe was forced to scale  
9 back our games. In early 2004, the Commission  
10 identified a number of our games as being  
11 questionable. Though we disagreed with the  
12 Commission's findings, we removed 76 games and  
13 modified approximately 600 others.

14 The tribe's effort to work with the  
15 Commission resulted in a 56 percent decrease in  
16 net income, a 56 percent decrease. Notably, the  
17 game features that we were forced to removed are



18 the very same ones that are still being used at

19 the racetrack.

20 Unfortunately, the impact of the

21 Commission's directive was actually far greater

22 as tribes chose not to fire existing employees,

220

1 and as the state's racetracks continue to expand

2 and as sweepstakes games continue to spread, our

3 revenue continues to dwindle.

4 None of us can imagine any other type of

5 business that would be deemed denied the right to

6 expand while other competition is permitted to

7 thrive. This, however, is exactly what is

8 happening to us. The state continues to refuse

9 to negotiate with the tribe for the very same



10 game they are permitting elsewhere. They are  
11 also opposing our pending request for secretarial  
12 procedures.

13 Adding insult to injury, the Commission  
14 is now attempting to narrow the scope of Class II  
15 gaming. With the addition of random  
16 requirements, the proposed rules would limit the  
17 tribe to even slower playing and less  
18 entertaining games than we currently operate.  
19 Our competitors, however, will remain unaffected.

20 The impact of this regulation on my  
21 tribe is quite simple. We will no longer be able  
22 to keep pace with our competitors and eventually,

1 we'll be forced to close our doors. Such a  
2 dramatic change to the legal landscape seems



3 unconscionable, particularly given the lack of  
4 any supporting court action or congressional  
5 enactment.

6       If the Commission moves forward with  
7 this rulemaking, it is our estimate that the  
8 revenues of our Etmo facility will be impacted by  
9 an additional 80 percent. The impact will only  
10 increase as the casinos on the Gulf Coast damaged  
11 by the last year's hurricanes resume operation.  
12 With competition in Central Alabama continuing to  
13 expand uninhibited, the tribe's facilities in  
14 Montgomery can no longer remain competitive and  
15 would be forced to close, closure that would  
16 result in the loss of more than 500 jobs.

17       We object to the fact that we will be  
18 required to replace all of our games with slower  
19 and less profitable games. Slowing the game to  
20 the point where it is no longer economically  
21 viable can by no stretch of the imagination be  
22 seen to further the intent of IGRA. This is



1 especially true as technology was never intended  
2 to limit the commercial success of an industry.

3       The Commission should not place tribes  
4 at a competitive disadvantage, particularly in  
5 the absence of a semiole fix. Consideration  
6 must be given to the tribes that find themselves  
7 in the rare situation in which we find ourselves.  
8 We should not be penalized because a state  
9 refuses to follow the law. We should be allowed  
10 to operate not only with these games authorized  
11 by IGRA but also those that incorporate features  
12 that are legal in our state.

13       If the Commission insists on moving  
14 forward with the rulemaking, an appropriate  
15 grandfather clause must be incorporated. Gaming  
16 is the primary economic enterprise for my tribe.



17 It has provided our rural communities with jobs,  
18 both for tribal members and our neighbors. It  
19 has also allowed us to add to our community's tax  
20 base.

21 In fact, in 2004, our operations  
22 generated more than \$15 million in federal

223

1 income, payroll, sales and excise tax. Our  
2 payroll that year exceeded 11 million and we  
3 spent more than 35 million in services, goods and  
4 services.

5 Gaming has provided us the ability to  
6 educate our children, build houses and medical  
7 clinics and improve the lives of our elderly. To  
8 eliminate these benefits would be a devastating



9 blow to both the tribe and the other residents of

10 Alabama.

11 While the long-term implications of this  
12 rulemaking on all tribes are immense, few will be  
13 impacted as Poarch Creek. Our ability to conduct  
14 gaming on an equal footing with our competitors  
15 is already severely limited. If the Commission  
16 finalizes these proposed rules, our ongoing  
17 struggle to remain equal footing with our  
18 competitors will simply become an impossibility.

19 I thank you for the opportunity to  
20 provide these comments and we will be submitting  
21 written comments prior to September 30th.

22 CHAIRMAN HOGEN: Thank you, Chairman.



2 MR. MARCHAND: Good afternoon, Mr.

3 Chairman, Vice Chairman, staff.

4 My name is Michael Marchand. I'm

5 Chairman for the Colville Business Council and I

6 represent our tribe with 9,200 members in

7 Washington State. I'm pleased to represent our

8 views on Economic Impacts of the proposed rule on

9 Class II gaming.

10 The Colville Tribe has 1.4 million acres

11 of trust and a lot of lands. Although not

12 considered a single Indian tribe, the

13 Confederated Tribes actually are comprised of 12

14 smaller tribes from the Washington, British

15 Columbia and Idaho and Oregon areas.

16 Our location is quite remote from the

17 main commercial corridors of Washington State.

18 The nearest entrance to the interstate highway is

19 approximately a hundred miles from Municipalin,

20 the seat of our tribal government. Our

21 reservation, income taxes, lands, economically

22 depressed, rural areas, North Central Washington.



1        Our tribe with its corporate entity, the  
2 Colville Tribe Enterprise Corporation, employs  
3 over 2,000 people, many of whom are also non-  
4 unions. As one of the largest employers in our  
5 area, the tribal payroll contributes substantial  
6 sums to the off-reservation economy.

7        The economic growth of our tribe has  
8 increased substantially because of Indian gaming.  
9 We currently operate three relatively small  
10 casinos. Our gross gaming revenues have rarely  
11 approached 25 million in any fiscal year and have  
12 declined steadily over the past several years.  
13 We lost about \$4 million revenue after our tribal  
14 state compact was finalized in 2004. So, we're  
15 not "a rich gaming tribe," but just income has



16 enabled us to significantly expand the government  
17 services to our people and provide jobs for our  
18 members and non-members alike.

19 As of last month, the tribe's three  
20 casinos employed 314 people. Our tribe uses 80  
21 percent of casino net revenues to fund essential  
22 tribal governmental services, including services

226

1 for elders, fire safety, police protection,  
2 gaming regulation, planning and social health  
3 services, housing and education. We do not use  
4 any gaming revenues for per capita payments to  
5 our members. Another 20 percent gets reinvested  
6 back into the economic development in our tribe.

7 Because we are located in an



8 economically-depressed area, the Colville Tribe  
9 would like to expand its Class II gaming on  
10 several new sites. Under our compact, we are  
11 allowed six casino sites in the State of  
12 Washington, but because of the limitation on the  
13 number of Class III machines, we have filled up  
14 three of the casino sites under the state  
15 allocations. With the continued expansion, we  
16 would have to go to the Class II machine.

17       We are far from urban population centers  
18 and major transportation corridors to become a  
19 big casino tribe. That's not really possible for  
20 us. Our proposed ventures will not change this  
21 outcome. Rather, it would provide us the chance  
22 to expand our market, recoup our postcompact



1 losses and generate additional much needed  
2 revenues to fund Colville tribal government as  
3 well as provide jobs and economic growth for the  
4 area. Yet, we face substantial hurdles,  
5 including the formidable obstacles created by the  
6 NIGC's proposed rule.

7       The Indian Gaming Regulatory Act has  
8 been the single most successful economic  
9 development legislation ever passed by Congress.  
10 As Chairman Hogen stated in an address to the  
11 Senate Committee on Indian Affairs in September  
12 21, 2005, in the years since IGRA was passed,  
13 Indian gaming has grown exponentially. Revenue  
14 from Indian gaming have built roads, schools, and  
15 health centers on reservations across the country  
16 and greatly reduced reservation unemployment in  
17 many areas.

18       Chairman Hogen also assured tribes at  
19 Tacoma last month that he's trying to permit a  
20 fun, profitable, attractive game that can be  
21 played in Class II.



228

1 this proposed rule would have the opposite  
2 effect.

3 The games under this rule would be  
4 exceptionally slow, less aesthetically pleasing,  
5 less enjoyable, far less appealing to players and  
6 dramatically less profitable than current Class  
7 II games, not compared to machines and  
8 uninteresting facilities would result in  
9 substantial loss of patrons and revenue causing a  
10 disproportionate loss of jobs.

11 Tens of thousands of American jobs would  
12 be lost in areas of this country that can least  
13 afford it and Colville Reservation is one of  
14 those areas.



15       The negative impact the proposed rule  
16 will have a ripple effect throughout Indian  
17 communities as well. When casino employment goes  
18 down, dependence on state and local support  
19 systems goes up. Severely limited governmental  
20 resources are stretched to the breaking point.  
21 The ability to purchase goods and services  
22 diminish. Businesses and lending institutions

1 are impacted as well.

2       When citizens are gainfully employed in  
3 tribal casinos that require satisfactory credit  
4 rating, clean criminal record, no contact with  
5 known criminals, maintenance of suitability for  
6 licensing, the ripple effect in state and local



7 communities is enormous. There is a reduction of  
8 public entitlement costs, emergency room use,  
9 drug offenses, domestic violence, property  
10 crimes, alcohol-related crimes, court hearings,  
11 incarcerations and unemployment claims.

12       There is also an increase in the  
13 employment earnings and payment of taxes and the  
14 stabilization of family life that helps keep the  
15 children in school and out of trouble. At  
16 Colville, we've seen a number of success stories  
17 where tribal members employed by our casinos have  
18 turned their lives around and become positive  
19 role models.

20       In Washington State, Indian gaming  
21 greatly benefits the non-Indian communities as  
22 well. This is evidenced by the fact that fully



1 75 percent of tribal gaming casino employees are  
2 non-Indians in the State of Washington. Casinos  
3 and other tribal businesses, although not  
4 directly taxed by the state, have spawned a \$3.2  
5 billion Indian economy that generates jobs,  
6 spending in taxes throughout the region.

7 Most of the purchases generated by this  
8 Indian economy are made off the reservation and  
9 they're subject to state taxation. In Washington  
10 State, the state and local taxes from Indian  
11 gaming total a \$141 million annually.

12 Class II gaming is a safety net for  
13 tribes that cannot engage in Class III gaming.  
14 This Class II insurance policy is particularly  
15 important because of blanket prohibitions under  
16 state law for tribes located in states that  
17 refuse to negotiate and bad faith for Class III  
18 gaming.

19 IGRA's good faith requirements were  
20 effectively destroyed by the Seminole decision.



21 The proposed Class II rules would effectively  
22 relegate Class II gaming to the junk heap,

231

1 leaving tribes at the mercy of states for Class  
2 III activities.

3 Smaller tribes as well as tribes with  
4 limited income will also be disproportionately  
5 impacted. Adding insult to injury, if they  
6 cannot afford to send representatives to meet the  
7 NIGC, they're relegated to a paper response and  
8 effectively denied government-to-government  
9 consultation.

10 Chairman Hogen claims that there is a  
11 desperate need to bring some clarity to the Class  
12 II gaming and has indicated that this proposed  
13 rule is for the benefit and protection of tribes.



14 He says that NIGC will no longer have to shut  
15 down Class III gaming under the guise of Class  
16 II.

17 With all due respect to Chairman Hogen,  
18 Colville does not share the confusion the NIGC  
19 has over what constitutes a Class II bingo game  
20 nor do federal courts. In fact, this proposed  
21 rule would also outlaw the Class II electronic  
22 bingo games previously approved by the NIGC and

1 Chairman Hogen's own statement in a letter to the  
2 Oklahoma tribes, that it doesn't matter how the  
3 games look, if it is bingo, it is Class II.

4 The NIGC has repeatedly told tribes that  
5 no economic impact study has been done, no



6 determination has been made about the economic  
7 devastation the proposed rule will have in Indian  
8 Country. Unfortunately, the NIGC has the cart  
9 before the horse.

10       The Colville Tribe urges the NIGC to  
11 conduct and publish a thorough economic study  
12 before finalizing this proposed Class II rule.  
13 We ask that the NIGC stop the current regulatory  
14 train and take into consideration both the  
15 considerable information obtained from tribes in  
16 response to the current proposal and the economic  
17 impact data from the study and should the NIGC  
18 decide to proceed with the Class II proposal,  
19 ensure that the proposal takes into consideration  
20 all of the above and provides sufficient time and  
21 meaningful opportunity for additional tribal  
22 input before finalizing the Class II rule.



1       As a federal trustee under IGRA, the  
2 NIGC has a trust responsibility to promote tribal  
3 economic development, tribal self-sufficiency and  
4 strong tribal government, not to be an agent of  
5 economic destruction.

6       Under 25 USC 2701(4), Congress enacted  
7 IGRA to protect Indian gaming as a means of  
8 generating tribal revenue. 25 USC Section  
9 2702(3), emphasis added. However, this proposed  
10 rule would diminish tribal revenues by  
11 establishing an overly-restrictive regulatory  
12 regime that violates both the basic tenets of  
13 IGRA and longstanding federal policy.

14       Thank you for this opportunity to  
15 present my tribal views on these issues, and I'm  
16 pleased to answer any questions. Thank you.

17       CHAIRMAN HOGEN: Thank you. Mr.  
18 Stevens?

19       MR. STEVENS: Good afternoon, sir. My



20 name is Ernie Stevens, Jr., and I'm honored to be  
21 here. I'm a member of the Oneida Nation of  
22 Wisconsin. I'm honored to serve as Chairman of

234

1 the National Indian Gaming Association.

2 With me today is Mr. Mark Van Norman,  
3 our Executive Director at the National Indian  
4 Gaming Association. He's a member of the  
5 Cheyenne River Sioux Tribe.

6 Thank you again, Chairman Hogen,  
7 Commissioner Choney, for this opportunity.

8 As you know, NIGA's a non-profit  
9 organization made up of a 184 federally-  
10 recognized tribal nations. Our mission is to  
11 protect and preserve tribal sovereignty and the  
12 ability of tribes to generate revenue through



13 gaming.

14       Because of our mission, I must state  
15 that the National Indian Gaming Association is  
16 strongly opposed to the NIGC's proposed  
17 classification of games regulations.

18       The proposed rule would infringe on  
19 tribal sovereignty and undercut the ability of  
20 Indian tribes to generate revenue through  
21 currently federally-sanctioned technological aids  
22 to Class II gaming.

235

1       I know time is limited, so I'll briefly  
2 detail NIGA's opposition.

3       First and foremost, the proposed rule  
4 infringes on tribal sovereignty. Congress,



5 through the Indian Gaming Regulatory Act and the  
6 NIGC in the preamble to the proposed rule,  
7 acknowledged that Indian tribes are primary  
8 regulators of Indian gaming.

9 Tribal governments take their role as  
10 primary regulators seriously. In 2005 alone,  
11 tribes spent more than 300 million on Indian  
12 gaming regulation.

13 While the NIGC acknowledges the role of  
14 tribes as the primary regulators of Indian  
15 gaming, the proposed rule offers no meaningful  
16 input or role for tribal regulators in the  
17 classification of the games process.

18 Under the proposed rule, the NIGC  
19 testing labs makes a determination of whether the  
20 game is Class II or Class III. If the lab makes  
21 a tribal positive finding that the game is Class  
22 II, tribes must still wait to see if NIGC is



1 satisfied and does not challenge that decision.

2 If, however, the lab finds that the game is Class

3 III, then it's final. Tribes cannot challenge

4 the decision. In the end, there is no meaningful

5 role for the tribe to play.

6 We object to the absence of due process

7 for tribes and request that the NIGC revise the

8 proposal to engage the tribal regulators on a

9 government-to-government basis.

10 In July of 2002, when the NIGC withdrew

11 an earlier proposal for classification

12 regulations, the agency stated the following, and

13 I quote: "As a matter of sound public policy as

14 well as in the interest of fairness and due

15 process, a regulated industry ought not be forced

16 to risk enforcement action in order to obtain

17 legally-binding and judicially-reviewable

18 classification opinion from the Commission."



19       The proposed rule does not avoid this  
20 result. Tribes would be forced to risk  
21 enforcement in order to obtain a judicially-  
22 reviewable opinion.

237

1       The primary purpose stated by the NIGC  
2 for this proposal is to set a bright line between  
3 Class II and Class III games. The regulations as  
4 drafted wrongly seek to classify games based on  
5 appearance, speed and profitability of electronic  
6 aids rather than IGRA's definition. Not only is  
7 this counter to the law, it unfairly robs the  
8 tribes of economically-viable Class II gaming.

9       The bright line sought by regulations  
10 end up offering nothing more than confusion and  
11 unpredictability for Indian tribes and tribal



12 regulators. Essentially, for tribes, it's all

13 risk and no reward.

14       The second reason for our opposition is

15 that the proposal would cause significant

16 economic damage to tribes that rely on Class II

17 gaming. The proposal severely limits the

18 economic viability of technological aids to Class

19 II games.

20       In 2005, Class II gaming generated 2.5

21 billion in gross revenues, created over 77,000

22 American jobs and generated over 1 billion in

1 federal, state and local income, sales and other

2 taxes, and decreased welfare and unemployment

3 benefit payments.



4        Industry leaders have informed us that  
5   no current electronic Class II games would meet  
6   the standards set by the proposed rule. As a  
7   result, all Class II games would need to be  
8   reconfigured and the tribal governments end up  
9   footing the bill for this reconfiguration.

10        In addition, once the games return to  
11   the floor, our conservative estimates show that  
12   the proposed rule would cut the economic activity  
13   created by Class II gaming in half.

14        Many of those tribes that rely on Class  
15   II gaming are located in economically-depressed  
16   regions of Indian Country. The important jobs  
17   that Class II gaming provides to these  
18   communities are irreplaceable.

19        The NIGC has not even considered what  
20   the economic impact will be to the communities  
21   that can least afford the expenses required for  
22   compliance. We have great concern about the



1 negative impact that the NIGC proposal will have  
2 in these regions.

3 We believe that these impacts can be  
4 mitigated by changing the proposal to eliminate  
5 unnecessary restrictions on prize structure,  
6 appearance, and speed of play of Class II aids.  
7 We hope that the NIGC shares our concern and will  
8 make these necessary changes.

9 Further, tribal victories and costly  
10 hard-fought legal battles will be uprooted by the  
11 proposal, including the very games affirmed by  
12 the federal courts and previously authorized by  
13 the NIGC. Millions of dollars that have been  
14 invested in reliance on current settled law will  
15 be lost, ensuring future litigation.

16 The loss of millions invested may not  
17 even be as staggering as the billions of dollars



18 of future Class II earnings that will be divested  
19 from Indian Country. If the new rules are  
20 enacted, tribal governments will lose nearly 3  
21 billion annually based on current Class II  
22 earnings. These losses will inevitably grow not

240

1 just because of the reduced growth of Class II  
2 games in areas where states refuse to negotiate  
3 tribal state compacts in good faith, these  
4 problems will be magnified because the tribes are  
5 unfairly blocked from Class III gaming.

6 Finally, our biggest objection to the  
7 proposed rule is based on the fact that it  
8 ignores 18 years of precedent. The  
9 classification of Class II games has evolved over  
10 the past 18 years through federal court



11 decisions, NIGC advisory opinions, and other  
12 changes in the law. The tribes have gained a  
13 significant amount of clarity through these  
14 decisions.

15       We are concerned that the regulation  
16 fails to adhere to the federal courts'  
17 interpretation of the law for Class II game  
18 classification. Moreover, as a fundamental  
19 principle of Indian law and because the NIGC is  
20 specifically tasked to oversee the interests of  
21 tribes, the Commission must interpret the law  
22 liberally in favor of the tribes.

1       However, because the proposed rule is  
2 contrary to the cases and the interest of the



3 tribes, NIGA's concerned that the legal principle  
4 has been abandoned. We believe that to follow  
5 the law, the NIGC must reverse course on the  
6 proposed rule to ensure that it is consistent  
7 with fundamental fairness and with the holdings  
8 of the court.

9 Mr. Chairman, Commissioner Choney,  
10 Indian gaming is the Native American success  
11 story and Class II gaming is indispensable to  
12 this success. In terms of federal revenue,  
13 Indian gaming overall contributed 6.1 billion in  
14 federal revenue and 1 billion to the Treasury  
15 last year. In other words, Indian gaming  
16 generated more in federal revenue and revenue  
17 savings than the entire budget for the Bureau of  
18 Indian Affairs and the Indian Health Service  
19 combined. Class II gaming made up an important  
20 contribution to the federal budget.

21 Class II gaming is funding tribal  
22 essential services, including new schools, youth



1 centers, hospitals and health clinics, elderly  
2 nutrition, and child care centers, police and  
3 fire protection, water and sewer services,  
4 transportation, and cultural preservation, just  
5 to name a few.

6       Frequently, federal funds are  
7 unavailable or simply in too short supply to  
8 build these facilities. No state funding is  
9 available for these projects. Without Class II  
10 gaming, these facilities would never be built in  
11 many areas of Indian Country.

12       The proposed rule for the classification  
13 of games neither protects nor enhances the  
14 economic opportunities created for tribes through  
15 Class II gaming. Instead, it severely limits  
16 these opportunities.



17       We request that the NIGC adhere to its  
18 responsibility to interpret the law fairly,  
19 independently and in accordance with the intent  
20 of Congress and the federal courts and to engage  
21 with tribes in meaningful consultation.

22       Mr. Chairman, Commissioner Choney, I

243

1   thank you for your time this afternoon.

2       CHAIRMAN HOGEN: Thank you, Mr. Stevens.

3       Are there any comments or questions

4 regarding this subject from the public?

5       MR. MARTIN: Good afternoon. My name is

6 Tim Martin. I'm President and CEO of Creek

7 Indian Enterprises, the economic development arm

8 of the Poarch Band of Creek Indians.

9       As my chairman has most adequately



10 stated, there is a uniqueness that follows on the  
11 Poarch Band of Creek Indians and that uniqueness  
12 is a total unfair playing field.

13 My question to the Commission is the  
14 consideration where a state which will not  
15 negotiate in good faith a Class III compact but  
16 yet has games that you would classify as Class  
17 III games, but they do not classify them as Class  
18 III games because they're silent on the  
19 classifications, they simply say that they need  
20 to be games of bingo, where would the Commission  
21 consider recognizing tribal sovereignty and  
22 recognizing state sovereignty whereas to where a

1 state is more liberal in the interpretation and



2 the classification of bingo games allow the  
3 tribes equal footing to play those same games on  
4 their reservations?

5 CHAIRMAN HOGEN: That's a very  
6 appropriate subject, I think, for us to consider.

7 These several examples that have been  
8 listed where states are openly and notoriously  
9 conducting Class III gaming that refuse to come  
10 to the table and negotiate a Class III compact  
11 are absolutely the most challenging. You know,  
12 we would like to be able to approach everything  
13 evenly, but if you've got 28 states that step up  
14 to the plate, negotiate compacts, and in effect  
15 do it fairly, what do you do in those few that  
16 don't? Should you play by a different set of  
17 rules?

18 I would, you know, much appreciate any  
19 suggestion or any proposal that might point a way  
20 to in effect look at what some states permit or  
21 provide to see if that could be weaved into any  
22 scheme that we would finally adopt. We don't



1 have that present in the current proposal, but  
2 we're open to suggestion in this regard.

3 MR. MARTIN: Well, our tribe's  
4 suggestion is that you allow and recognize state  
5 sovereignty and allow the tribes to, as IGRA  
6 calls for, to play games that are accepted in  
7 that state and their classification. An easy fix  
8 for our tribe as far as when a state is not  
9 negotiating in good faith but they allow games  
10 that under your classification would be Class III  
11 games, but allow us to play what the games are  
12 being played in the state. That is a  
13 satisfactory fix in our state, sir.

14 CHAIRMAN HOGEN: Thank you. We will  
15 give consideration to that approach.



16 George?

17 MR. TIGER: Chairman Hogen, Mr. Choney,

18 all those that have been on panels today, I just

19 want to say thank you for enlightening me because

20 I was taught if you listen before you say

21 anything and so I'm going to -- also, I have a

22 letter for you that I've submitted to you. I

246

1 have a hard copy that I'd like to have on record

2 concerning these hearings.

3 My name is George Tiger. I'm the

4 Speaker of the Legislature for the Muscogee Creek

5 Nation in Oklahoma. It's good to see our

6 relatives from Alabama.

7 As you know, as Indian people, it seems

8 like we go in cycles and that's kind of where I'm



9 at on this thing. The Muscogee Creek Nation was  
10 the first tribe to conduct gaming in the State of  
11 Oklahoma. We came from being an innovator in  
12 gaming in Oklahoma to a public nuisance and being  
13 taken to court to now being listed as a tourism  
14 attraction in Tulsa, Oklahoma. So, we've kind of  
15 went the gauntlet.

16 But I just want to say this. From  
17 everything that I've heard today from all the  
18 panels and all these proposed changes that are  
19 being talked about, I believe that if it is  
20 published, that Indian gaming as we know it today  
21 dies and since that seems to be kind of the road  
22 we're taking, I just want to say that when I go



1 home to my legislature and my colleagues that I  
2 serve with, which number 26, I'm trying to figure  
3 out how I can tell them that we just started  
4 building a \$120 million facility in Tulsa,  
5 Oklahoma.

6 So, does that mean that we're going to  
7 have a hard time recouping our investment or does  
8 it mean that if Indian gaming as we know it today  
9 dies, does that mean that I'm going to have to  
10 ask my good friend, the chairman of the proud  
11 Comanche Nation, who owns a funeral home, to come  
12 and do a funeral for Indian gaming in the \$120  
13 million facility?

14 Those are things that I'm hearing, and  
15 all I can say to you is I know that you have a  
16 difficult job, but I look at you as our relatives  
17 because all of us are and I know you're doing a  
18 job, but again it kind of goes back to how  
19 history has always had Indian people problems  
20 dealt with. We fight against each other and that  
21 seems to be where we're at.

22 When does the state give up their



1 sovereignty? This afternoon, we heard someone  
2 say that they'd like to see the tribes giving up  
3 their sovereignty on some of these issues. Well,  
4 when does the state? When does the federal  
5 government actually come and negotiate with us in  
6 a good faith atmosphere?

7       So, when I go home tonight or in the  
8 morning, the message I have is basically I really  
9 don't know what to tell them because we know that  
10 history says that we can have all these hearings  
11 and have all the input that we're supposed to be  
12 having as Indian people, but when it's all said  
13 and done, it's over.

14       Thank you.



15 CHAIRMAN HOGEN: Thank you, Mr. Tiger.  
16 Let me commend to you the preamble to the  
17 proposed regulations that we published in the  
18 Federal Register on the 25th of May.  
19 We've been, you know, doing much of the  
20 talking when we've gone out to Indian Country and  
21 the 70+ tribes we met with. We also did a lot of  
22 listening. We really didn't set aside time to

249

1 try and tell our whole story, and I think, you  
2 know, when we go back to the drawing board, we  
3 will -- if we do finalize regulations, they will  
4 reflect the concerns that we've heard here today.  
5 But, you know, I think we tried to  
6 explain where we were coming from and why we felt  
7 this was needed as well as we could in the



8 preamble that we published in the Federal  
9 Register and before anybody, you know, just draws  
10 all of their conclusions from what's said here  
11 today, I encourage you to look at that.  
12 Yes, sir?  
13 MR. PETERS: Thank you for allowing us  
14 time.  
15 My name is Jim Peters. I'm the Tribal  
16 Chairman of the Squakin Island Tribe.  
17 We've had occasion a couple of times,  
18 Chairman, to talk on some issues out in  
19 Washington area, and Commissioner.  
20 One of the things I heard you say  
21 earlier today that you were going to listening to  
22 what was being said here today, and I hope you do



1 listen to that because I know we've got a lot of  
2 facts out on the table. We have a lot of  
3 economic studies, stacks and stacks, that prove  
4 the benefits of tribal gaming facilities in their  
5 areas.

6 But one of the other things is that  
7 regulations are usually created to protect  
8 something. The Northwest tribes are very  
9 involved in the co-management of natural  
10 resources in the Northwest area, and we're  
11 protecting salmon resources, natural resources in  
12 general, so that they don't go extinct, and that  
13 our quality of life in that state stays at a  
14 standard not just for the tribes but for all of  
15 the citizens of Washington State.

16 So, there's a purpose behind those type  
17 of things and part of that is that we're  
18 regulating those and also allowing the timber  
19 industry, the agricultural industry, the builders  
20 and the well drillers to still be able to make  
21 money at what they do, and so they're still



22 surviving. The natural resources are still

251

1 surviving, and there is a needed regulation there  
2 that's put in place, and we adapt that every once  
3 in awhile.

4       However, this regulation is adapting to  
5 regulate, I believe, the bottom line of the  
6 tribes making money. We have been successful  
7 with this enterprise and for some reason, the  
8 federal government, the state governments are  
9 afraid, that every time the tribes meet a certain  
10 success level, there's a lot of legislation,  
11 there's a lot of initiatives, there's a lot of  
12 anti-tribal senticisms that start to occur and we  
13 have to spend our resources to battle those. So,



14 this isn't anything different than what we are  
15 used to, but again it's all about the money that  
16 we have.

17       One of the things that I wanted to make  
18 clear is that Squakin Island Tribe is a small  
19 tribe in Washington. We are the Number 1  
20 employer of Mason County. Our economic  
21 development in our area has brought Mason County  
22 out of a depressed state up to the level that

252

1 it's out of that status. I don't know what it  
2 is, but it's definitely not considered as a  
3 depressed county anymore in Washington State.

4       So, Mr. Chairman, I would like to  
5 hopefully, please, listen to what I have to say  
6 in this last thing, is that the impacts that this



7 regulation's going to have is not only loss of  
8 jobs in that county, that's not just tribal jobs,  
9 but there are loggers that have been retrained,  
10 there's fishermen that have been retrained to  
11 come to work at our facilities, but it's the  
12 daycare center, state of the art daycare center  
13 that we built with our money. It's the education  
14 program that we have at our tribe that takes care  
15 of our kids as soon as they're in daycare all the  
16 way up to graduation. It's the college  
17 scholarships that our kids are receiving now that  
18 will be able to go to colleges and fulfill their  
19 dreams.

20 Elder programs, law enforcement, fire  
21 fighting, fire protection services. We have an  
22 agreement with the local fire district of



1 upgrading their station and their ability to be  
2 able to respond not only to the reservation but  
3 to that area of the county.

4       The other thing is that we're not only  
5 providing this for our own people but we are  
6 issuing scholarships to the local high schools in  
7 Mason County that are open to all students. All  
8 of this will be very impacted if this occurs, and  
9 it's not just the Squakin Island people, it's the  
10 people of Mason County, Jefferson County, Grays  
11 Harbor County, Thurston County where our tribal  
12 members go, where those citizens of those  
13 counties come and work at our facilities and  
14 utilizes the resources that we have there.

15       So, please listen to that, take that  
16 home, and please don't listen to -- you know, one  
17 of the concerning things that I've heard from the  
18 representative of our state was the probable  
19 illegal activities.

20       I can't comprehend how you deal with



21 that because everything is probable, and I think

22 if we take it -- I haven't seen any facts that

254

1 there has been illegal activities. There's

2 always this fear factor thrown out there.

3 Federal government, state government.

4 You guys don't have to be afraid of us. We are

5 very successful. If we work together, we can

6 protect each other and for all of our citizens.

7 So, just please take that home.

8 Thank you.

9 CHAIRMAN HOGEN: Thank you. And we will

10 take very seriously the concern not only for the

11 tribal folks that are dependent on these revenues

12 but the surrounding communities and the witnesses



13 here in this panel dramatically emphasized and  
14 demonstrated that.

15 You pointed out the concern or the  
16 participation your tribe participates in in  
17 trying to prevent species from going extinct.

18 Well, similarly, we are concerned. We don't want  
19 to see Class II gaming go extinct. If in fact  
20 you can't one day tell the difference between  
21 what's Class II and Class III, I am concerned  
22 about that extinction.

255

1 We've heard today that no, there's  
2 plenty of difference between what we're doing as  
3 Class II and what's Class III, and we will bear  
4 that in mind, but our concern has not been driven  
5 by the fact that tribes have been successful and



6 have made a lot of money in Class II gaming that

7 we feel that's gone too far. Just the opposite.

8 We've been proud to be a part of the

9 dramatic growth in gross gaming, net gaming

10 revenues for Indian tribes through gaming and we

11 want to continue to play that role.

12 Yes, sir? One more question.

13 MR. YANITY: Shawn Yanity,

14 Stillaguamish, and you forgot to mention you're

15 the gateway to the Olympics. That's one thing

16 they pride themselves on. They're the gateway to

17 the Olympic Mountains.

18 Our tribe just met with the City Council

19 of Arlington and we've been fostering a great

20 relationship with the city. Our casino's outside

21 the city limits, but our admin office and a lot

22 of our clinics and facilities are inside the city



1 limits.

2       One of the things that we like to boast  
3 is we foster a great relationship with the city  
4 and they're seeing huge benefits come to their  
5 community because of the casino. Our kids go to  
6 public schools. Since we don't have a large  
7 reservation, we have scattered parcels of land,  
8 our kids go to public schools. We've dumped a  
9 lot of money into those programs, tutoring  
10 programs. Social services is a huge thing with  
11 our tribe.

12       So, has the Commission fully evaluated  
13 the cascade effect on tribal services and tribal  
14 business? Many tribal businesses and tribal  
15 services are only possible due to the revenue  
16 stream provided by the tribe's casino.

17       Currently, our Class II machines make up  
18 18 percent of our total floor. Should the  
19 economic viability of these machines be removed,



20 it will affect fully 25 percent of our facility's  
21 revenue stream. Add this to the projected impact  
22 on the neighboring economies, utilizing a local

257

1 multiplier effect, and the total impact on our  
2 small facility and the surrounding community is  
3 frightening.

4 If we take the \$185 win per machine per  
5 day we currently enjoy times it by 90 Class II  
6 machines in our facility, 365 days per year, we  
7 estimate gross revenues of \$6,077,250. According  
8 to Kension theory, we can assume \$10 generated by  
9 Class II machines in our facility will create \$40  
10 in total income to the local economy. Using this  
11 multiplier, the local communities can expect to



12 see a substantial decrease in the basically \$24.3

13 million of these machines that adds to the local

14 economy.

15 Thank you.

16 CHAIRMAN HOGEN: Thank you. One final

17 question here.

18 MR. COLEMAN: Thank you, panel. Again,

19 thank you, Commissioner.

20 As I shared with you earlier today, the

21 Nooksack Indian Tribe has doubled in population

22 in the past eight years. I'd like you to take

1 the opportunity with that information to go to

2 some of your counterparts, some of them that work

3 in this building here, Bureau of Indian Affairs,

4 find out how much services have increased in that



5 time frame, go to the Indian Health Services,  
6 find out how much has increased in their services  
7 for our tribe.

8 We need this additional economic engine.

9 Our existing casino is starting to flatten out.

10 So, it's one of the older ones in Washington

11 State. We need additional help. We're looking

12 to you for that help.

13 Last year when we did a feasibility

14 study, it says these Class IIs are going to help

15 you. We're going to become more self-sufficient

16 but not by doing these changes. We're going to

17 start stepping backwards. We're going to have to

18 start putting more people back on the social

19 services. Don't let us do that. Help us make us

20 be more self-sufficient and help our people.

21 Thank you.

22 CHAIRMAN HOGEN: Thank you. With that,



1 we'll conclude this panel. Thank you very much  
2 for your participation. We may have some  
3 questions we might want to submit to you with  
4 respect to some of the specifics, and if you  
5 could respond to those, we would appreciate that.  
6 Thank you.

7 We have one final panel before we go to  
8 a public comment period. So, let's commence in  
9 10 minutes, at 3:55.

10 (Recess.)

11 CHAIRMAN HOGEN: If you would have your  
12 seats, please, our panel is assembled and we are  
13 soon ready to proceed.

14 We are turning again to tribal leaders  
15 and tribal leaders come to us from all across the  
16 country here. The geography of the country is  
17 well represented in this panel.

18 Chief Paul Spicer from the Seneca-Cayuga